

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TYKEE J. ROSS,

Petitioner,

CASE NO. 08-12493

v.

KENNETH McKEE,

PAUL D. BORMAN

UNITED STATES DISTRICT JUDGE

Respondent.

**ORDER DIRECTING PETITIONER TO SUBMIT
A NOTARIZED STATEMENT OR DECLARATION
STATING THE DATE THAT HE SUBMITTED HIS
HABEAS PETITION TO PRISON OFFICIALS
OR MAILED THE PETITION TO A THIRD PARTY**

Petitioner Tykee J. Ross is a state prisoner currently confined at Bellamy Creek Correctional Facility in Ionia, Michigan. He has filed a *pro se* application for the writ of habeas corpus under 28 U.S.C. § 2254 and a motion for equitable tolling of the statute of limitations. Also pending before the Court is respondent Kenneth McKee's motion to dismiss the habeas petition as time-barred.

In order to resolve the pending motions, the Court must determine the date on which the habeas petition was filed. Under *Houston v. Lack*, 487 U.S. 266, 276 (1988), a prisoner's notice of appeal is deemed "filed" when the prisoner delivers the notice to prison authorities for forwarding to the court clerk. This rule has been extended to state prisoners' habeas petitions filed in the District Court. See *Cook v. Stegall*, 295 F.3d 517, 521 (6th Cir. 2002).

Petitioner's habeas petition was received and filed by the Clerk of Court on June 11, 2008. However, the petition was neither signed, nor dated, and Petitioner did not submit a

certificate of service stating the date that he delivered the habeas petition to either a third party or to prison officials for mailing or delivery to the Clerk of Court. Accordingly, it is **ORDERED** that Petitioner shall submit a notarized statement or a declaration under 28 U.S.C. § 1746 setting forth the date that he mailed his habeas petition to a third party for filing **or** the date that he deposited the habeas petition, with first-class postage prepaid, in the prison's internal mail system for filing with the Court. Failure to provide a notarized statement or declaration within **twenty-one (21) days** of the date of this order may result in the dismissal of the habeas petition.

SO ORDERED.

s/Paul D. Borman
PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated: February 12, 2009

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on February 12, 2009.

s/Denise Goodine
Case Manager